

Expanding a Community's Justice Response to Sex Crimes Through Advocacy, Prosecutorial, and Public Health Collaboration

Introducing the RESTORE Program

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Problems in criminal justice system response to date-acquaintance rape and nonpenetration sexual offenses include (a) they are markers of a sexual offending career, yet are viewed as minor; (b) perpetrators are not held accountable in ways that reduce reoffense; and (c) criminal justice response disappoints and traumatizes victims. To address these problems, a collaboration of victim services, prosecutors, legal scholars, and public health professionals are implementing and evaluating RESTORE, a victim-driven, community-based restorative justice program for selected sex crimes. RESTORE prepares survivors, responsible persons (offenders), and both parties' families and friends for face-to-face dialogue to identify the harm and develop a redress plan. The program then monitors the offender's compliance for 12 months. The article summarizes empirical data on problems in criminal justice response, defines restorative justice models, and examines outcome. Then the RESTORE program processes and goals are described. The article highlights community collaboration in building and sustaining this program.

Keywords: *community-based restorative justice; collaboration; restorative justice models; sexual assault; rape*

The National Violence Against Women Survey (Tjaden & Thoennes, 1998) documented that 18% of U.S. women have been raped. Six of every 7 rapes

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involved people who knew each other. Nonpenetration offenses are even more prevalent; almost one half of U.S. women have encountered an indecent exposure in their lifetimes (Riordan, 1999). Recent data revealed that within the past 7 months, 5% of college women (approximately 400,000 women) had someone expose his sexual organs to them, 5% received obscene telephone calls, and another 2.5% were observed naked without their permission (Fisher, Cullen, & Turner, 2000). The same study projected that between 20% and 25% of the more than 8 million women students would be raped while attending university. Because these crimes reinforce women's fears of crime and restrict spatial and social freedom, it is paramount for the justice system to act affirmatively to address them.

A collaborative group in Pima County, Arizona (Pima County Attorney's Office, Tucson City Attorney's Office, Southern Arizona Center Against Sexual Assault, Washington and Lee School of Law, and Mel and Enid Zuckerman Arizona College of Public Health, University of Arizona) has been examining problems in traditional criminal justice response in cases of date-acquaintance rape and nonpenetration sexual offenses such as voyeurism, exposure, harassment, public indecency, and obscene telephone calls. This article reviews the empirical data that support the problems we identified.

In response to the identified problems, the collaboration is implementing the RESTORE Program, a research-demonstration project that offers a restorative justice-based alternative to conventional adversarial criminal justice for meritorious cases of these selected sex crimes. To begin the discussion of our program, we review the restorative justice principles and models that are the conceptual foundation of the program. Then the processes, goals, and evaluation design of RESTORE are described in some detail. We conclude the article by highlighting the importance of sustained community collaboration in designing and implementing it. A collaborative group was essential to developing a program that is recognized by the criminal justice system, observes the Constitutional rights of the accused, fulfills state and international guarantees of victims' rights, provides services that are victim centered and competent in addressing offender conduct, meets guidelines for the restorative justice programs (e.g., Department of Justice, Canada, 2004), and conducts activities within the context of ethical principles regarding human participants in a research and evaluation project. We acknowledge

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that there are very significant legal issues that we grappled with in the design of the program that we address elsewhere (Hopkins, 2002; Hopkins, Koss, & Bachar, 2004; Hopkins, Koss, & Bachar, in press).

In this article *rape* is defined as penetration of the victim by the offender, against consent, through force, threat of bodily harm, or when the victim is incapacitated and unable to consent. We use the term *sexual assault* to include the range of nonpenetration sex crimes that are addressed by RESTORE in addition to rape. The sections of the article that address criminal justice system response use the words *victim* and *offender*, because that is the accepted vocabulary of criminal justice. When speaking of our alternative program, we use the terms *survivor* and *responsible person*, in part, to differentiate the approach from conventional justice. We use gender-neutral pronouns throughout the article in recognition that perpetrators of sexual assault are typically but not exclusively men and victims may be of either sex. We begin with a brief review of the empirical data that suggest three problems in conventional criminal justice response to the targeted sex crimes.

IDENTIFIED PROBLEMS

Minor Sex Offenses Are Markers of a Sex-Offending Career

The statutes and criminal justice system processing of the crimes we target are out of step with what the so-called minor sexual offenses signal. Arizona law, similar to that of many states in the United States, classifies the nonpenetration sex offenses of indecent exposure or exhibitionism at the lowest level of criminal culpability and punishable by a fine. In practice, these cases are usually settled with no fine, 1-year unsupervised probation, and no mandated treatment (K. Mayer, personal communication, February 8, 2002). By statute, Arizona requires mandatory sex offender registration only on a third repeated offense of indecent exposure or exhibitionism. Abel (2001) presented findings from a large data set on rapists he accumulated from sex offender treatment centers across the United States. Rapists self-reported, either voluntarily or under polygraph, multiple past acts of sexual deviance for which they might or might not have been caught—40% had watched people naked or having sex without their permission, 20% had exposed themselves, another 23% had masturbated in public, and 22% had made obscene telephone calls. Likewise, 14% of college student rapists admitted other sexual assaults (Lisak & Miller 2002; also see English, 2002, for evidence from polygraph examination of convicted sex offenders). Experts concluded that most perpetrators are involved in multiple acts of sex-

ual deviance, with multiple victim types (male and female, family and nonfamily, child and adult; Abel, Becker, & Cunningham-Rathner, 1988; Abel & Osborn, 1992; Burdon & Gallagher, 2002; English, 2002; English, Pullen, & Jones, 1996; Knapp, 1996; Strate, Jones, Pullen, & English, 1996).

Individual perpetrators are unlikely to be interrupted by laws that wrongly assume they repeat the same type of offense. In addition, the low level of sanction impairs general deterrence by communicating to the public that these offenses are less serious than a traffic offense such as drag racing, which in Arizona carries a higher penalty than nonpenetration sexual offenses. In state statutes, rapes and other more violent sex offenses are subject to stronger sanctions including incarceration, mandatory sex offender registration, and sex offender treatment. Yet in practice, as we elaborate in the following section, most alleged rapists and other violent sex offenders exit the system with none of these prevention measures in place.

Perpetrators Are Not Held Accountable

The general public may not realize that there are insufficient resources in the U.S. justice system to investigate and prosecute every reported crime. The handling of rape cases within the criminal justice system reveals a winnowing process that results in only a small fraction ending up in a courtroom. Just 16% of rapes are reported to the police according to independent surveys such as the Rape in America Study (Kilpatrick, Edwards, & Seymour, 1992). Federal estimates put the reporting rate at 36% (Bureau of Justice Statistics, 1997). Police in the United States are responsible for deciding which cases to fully investigate and turn over for consideration by prosecutors. Police may arrest suspects; however, only prosecutors have the authority to lay charges against them. Even though police have preselected their strongest investigations, prosecutors close the majority of cases without charging. For example, in Pima County, Arizona, 709 adult sexual assaults were reported to law enforcement in 2000. Of these, 361 (51%) were assigned for investigation, and only 18% were authorized for arrests (Pima County Interagency Council, 2001). Another series of cases were tracked in Hennepin County, Minnesota. When cases reached prosecutors, only 25% were accepted for prosecution (Frazier & Haney, 1996; also see Frohman, 1991, 1997, 1998). In Australia, Daly (2002) reported that sexual assault had the lowest rate of conviction among the juvenile crimes she examined (33% for sex crimes, 65% for burglary, 62% for assault, 89% for driving offenses). The most typical disposition for cases accepted for prosecution is not trial, it is a plea agreement. In response to agreeing to plead guilty and saving the state the expense of a trial, the offender is allowed to admit to a lesser crime, often to a

nonsexual offense, with the result that he or she may not be known to the system as a sex offender. In criminal justice settings, offenders typically maintain innocence throughout the process under advice of counsel to preserve their legal options.

A more ideal approach to reducing perpetration of these classes of sexual offenses would (a) raise the social costs of offending to deter individuals from deciding to commit sex crimes; (b) remove the need for offenders to deny the offense; (c) mandate treatment early in the offending career; (d) facilitate remorse and provide an avenue to make reparations to the victim and community that have been harmed; and (e) reduce public acceptance through evidence that offenders of these crimes are held accountable.

Criminal Justice Response Often Disappoints and Traumatizes Victims

Even minor sexual offenses are upsetting to women (Cox, 1988; Riordan, 1999; Smith & Morra, 1994). Yet women perceive that these crimes are trivialized. Beyond external wounds and well-documented, long-term chronic mental and physical health consequences (see Golding, 1999; Koss, Goodman, et al., 1994), crimes against women are a violation of social equity (Cosmides & Tooby, 1992). The need for justice is an intrinsic motive that is seen in higher primates as well as human beings. Although the actual social institutions that developed as a response have differed across time and place, efforts to eradicate intimate abuse extend back 2,000 years (Hopkins, 2002). Today many nations use an adversarial justice system based on Anglo-Saxon law (derived from English and French precedents) to adjudicate crimes against women and address victims' needs for protection, reparation, and retribution (see United Nations, 2000; Victims' Rights Working Group, n.d.).

In the criminal justice system, charges are brought in the name of the state. The victim may opt out of the system by declining to cooperate with prosecution but may be at risk of being compelled to testify by subpoena. When victims do wish for the case to proceed, they have little control of whether it, in fact, will be pursued by the prosecutor. Even when rape victims brought a legal advocate with them to interact with prosecutors, 2 of 3 rape victims had their cases turned down for prosecution, and 8 of 10 turndowns were against the victims' expressed wishes (Campbell et al., 1999). Victims have a right to be informed of a plea agreement under many state victim's rights schemes but typically have little recourse to oppose it. When rape is adjudicated in a courtroom in the U.S. criminal justice system, typically defendants request a jury trial. In jury trials, the verdict is reached by a group of people who are untrained in the legal standards for evaluating the probative value of the testi-

mony, and jurors in rape cases may be more prone to making flawed assessments of the testimony and other evidence presented (Woodzicka & LaFrance, 2001). Furthermore, the legal standard of proof is beyond a reasonable doubt. Given the myths about rape commonly held in the community, it is hard to reach this standard of proof, most particularly in cases where the parties are acquainted and perhaps some level of consensual intimacy preceded the rape. Defense attorneys know about these myths and use probing questions to skirt the edges of areas protected by rape shield statutes with the goal of raising speculation by jurors that the victim is confused, of bad moral character, and has a history of telling untruths, all with the aim to undermine the jury's ability to see the victim's nonconsent as genuine. For all of these reasons, the conviction rate in rape cases is low. In Minneapolis, just 12% of the cases actually tried resulted in a guilty finding (Frazier & Haney, 1996; also see Frohman, 1991, 1997, 1998); the figure for Philadelphia almost 25 years ago was 13% (McCahill, Meyer, & Fischman, 1979; also see Frohman, 1991, 1997, 1998).

Although stranger and acquaintance rape are not differentiated in most state statutes, studies have consistently shown that in practice they are treated as two different crimes. Although police training has improved, treatment of victims and decisions regarding case processing are still influenced by officers' private stereotypes (Campbell & Johnson, 1997; Jordan, 2004). Acquaintance rape victims report more secondary victimization than stranger rape victims including disbelief and insensitive behavior of police officers (Campbell, 1998; Campbell & Bybee, 1997; Campbell, Sefl, et al., 1999). Similar findings have been reported for the behavior of medical providers (Campbell, Sefl, et al., 1999). Juries respond much differently to rape cases depending on whether the victim and offenders were strangers to each other or were acquainted (Campbell, 1998; Ferraro & Boychuk, 1992; Razack, 1998). When judges and juries were independently polled about the guilt or innocence of the defendant, juries were equally likely to convict compared to judges in stranger rapes, whereas in acquaintance rape cases they were much less likely to convict in comparison to the judge's weighing of the evidence (reviewed in Bryden & Lengnick, 1997). These differences between judge and jury determinations are called "jury leniency." For acts between acquaintances where force was limited to that necessary to complete intercourse against consent, jury leniency was tied for the highest of any crime and was much higher than any other crime against the person of equivalent severity. In contrast, the jury leniency for aggravated rape of a stranger was near the bottom of the list (Bryden & Lengnick, 1997). The result of jury leniency in rape cases was significant differences in the system's response to intimate and nonintimate crime. Only 25% of rape cases involving acquain-

tances where the issue of consent was in dispute resulted in convictions (Weninger, 1978). Moreover, in Washington, D.C., only 9% of defendants who were ex-spouses, boyfriends, or cohabiting partners of the victim were convicted (Williams, 1981).

Those women whose rapes and assaults are adjudicated learn that even successful verdicts exact a price. They may be dismayed to learn that the record of their police report is public, they are expected to testify about graphic details of sexual assault in open court, and even rape shield laws fail to guarantee that they will be protected from questions about their social and sexual history when these issues are ruled relevant to determining consent. They may expect that they are the prosecutor's client but soon learn that the victim of record is the state and they have little control the conduct of the trial. Their sole role is as a witness for the prosecution. Because of the numerous protections accorded offenders under the U.S. Constitution, trials operate under rigid guidelines. Victims may experience discomfort with the environment of formality, sequestering of witnesses who may also be the family and supporters, attorney questioning that exacerbates self-blame, and the perpetrator's need to maintain innocence (Holmstrom & Burgess, 1975, 1978; Madigan & Gamble, 1989; Martin & Powell, 1994; Matoesian, 1993; McCahill et al., 1979; Sanday, 1996). Although this denial of guilt derives from defendants' constitutional rights, namely the presumption of innocence and the privilege against self-incrimination, failure to acknowledge intentional harm had negative effects in experimental studies (Ohbuchi, Kameda, & Agarie, 1989). These effects were inhibited when the harm doer apologized. Those few victims whose trials resulted in guilty verdicts discovered that they may have won a hollow victory because at sentencing they are not viewed as individuals who have unique needs as a result of their victimization with preferences about what consequences the offender should face (Hopkins et al., 2004). Instead, statutes present a standard set of sentencing parameters that treat all victims the same. A victim's request such as reparation or treatment for the offender is at the discretion of the judge, orders that are obtained are often not enforced, and any monetary award to the victim comes second to the offender's obligation to pay fines to the court (Hopkins et al., 2004).

Some but not all studies reveal that trial participation predicted negative victim outcomes. Rape victims whose cases were tried in court scored higher on measures of distress than those whose cases were not prosecuted (Cluss, Boughton, Frank, Stewart, & West, 1983). Testifying was 1 of 4 significant predictors of post-traumatic stress disorder (PTSD) symptoms among adult survivors of child rape (Epstein, Saunders, & Kilpatrick, 1997; for contradictory findings with adult victims in Germany see Orth & Maercker, 2004).

Increased nightmares, decreased social activities, more dissatisfaction with heterosexual relationships, loss of appetite, recurrence of phobias, and greater psychological distress have been documented among victims whose cases went to trial (Holmstrom & Burgess, 1975). Insensitive attempts to obtain the testimony of Bosnian rape survivors was shown to result in feelings of shame, lack of trust, fear of reliving bad memories, fear of reprisals, and suicide attempts (Allen, 1996). The ratings of a mixed group of victims (35% sexual assault, 43% physical assault, 22% other) whose cases were tried in German courts before a panel of judges showed that even without the rigors of a jury trial, victims perceived the procedures as unfair, viewed testifying as moderately stressful, and found that enduring the delay before trial was very stressful (Orth & Maercker, 2004). Data from 990 criminal trials before juries in the United States revealed that most victims believed rapists had more rights, the system was unfair, victims' rights were not protected, and they were not given enough information or control of handling their case (Frazier & Haney, 1996). In German courts, victims' overall ratings of their experience were negative, and they experienced little moral satisfaction (Orth & Maercker, 2004).

Many antiviolence advocates during the past 20 years have poured energy into lobbying for incremental reforms in law and criminal justice processing. These initiatives have increased the sentences for rape, removed spousal exclusions in rape laws, changed requirements that victims resist, removed corroboration requirements, added partial shields against revealing victims' sexual and social history, created civil commitment options for sex offenders, and established mandatory sex offender registration and notification. However, advocates who put their faith and energy into strengthening criminal justice response often fail to recognize that this crusade is carried on the backs of the victims who suffer in pursuit of prosecution, and that evaluations of statutory reform have revealed very limited to no effects on rates of reporting, charging, prosecuting, and convicting in cases of rape (Horney & Spohn, 1990; Matoesian, 1993). A more victim-centered justice response to sexual assault would include processes that (a) establish their safety; (b) offer options for cases where there is evidence supporting probable cause that a sexual assault occurred that under the status quo would be rejected for charging; (c) respond to victims' concerns regarding having choice, being treated as autonomous individuals, having face-to-face contact, and voicing the impact of their experience; (d) shorten the time between crime and consequence to reduce victim stress; (e) give victims input into the consequences faced by the offender; and (f) allow a process for victims to seek reparations and moral satisfaction (see Des Rosiers, Feldthusen, & Hankivsky, 1998). Surveys of victims of sexual violence who pursued a civil remedy revealed

that they wanted more than money. They were seeking to be heard and searching for validation of the wrong that they suffered (Des Rosiers et al., 1998).

OVERVIEW OF RESTORATIVE JUSTICE

In response to these identified problems, our collaboration has designed an alternative justice process for date-acquaintance rape and nonpenetrator sex crimes based on restorative justice. After a brief overview of the principles and models of restorative justice, we highlight how we have adapted them to address these selected sex crimes. Restorative justice philosophy differs from conventional justice primarily in how harm and accountability are conceptualized. From the restorative justice perspective, "Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which [sic] promote repair, reconciliation, and reassurance" (Zehr, 1990, p. 181).

From the restorative perspective, crime causes material harm—lost or damaged property or monetary losses, damage to business or public spaces—and personal-relational harm—physical injury, anxiety, anger, or depression, fractured relationships, weakened social bonds, increased fear, and diminished sense of community (Karp, 2001). Likewise, there are two types of repair of harm. *Material reparation* results from an agreement between the offender and those harmed, whereas *symbolic reparation* is the result of direct communication and involves social rituals of respect, courtesy, remorse, apology, and forgiveness (Scheff, 1998). The restorative justice perspective argues that those directly harmed should have decision-making authority on the resolution of the crime. In addition, a core value of restorative justice is that there should be a balance or parity among the victims, offenders, and the community that constitute the three so-called customers of the criminal justice system (Bazemore & Umbreit, 1995, p. 304).

There are many programs and methods that claim the label of restorative justice. McCold and Wachtel (2002) developed a schema to grade them according to how successfully they achieve the goals of restorative justice. The label *nonrestorative* is reserved for conventional adversarial criminal justice. *Mostly restorative programs* involve victims and offenders but typically exclude the community. Examples include victim-offender reconciliation and victim-offender mediation programs. Victim-offender programs originated in Kitchener, Ontario, in 1974, based on the Mennonite church traditions (Strang, 2002). These programs typically occur postconviction and

do not necessarily involve a direct meeting where the victim can voice the impact of the crime and ask questions of the offender. Programs using the term *mediation* differ from those using *reconciliation* by the former's greater emphasis on restitution. We believe that mediation's conceptual foundation is inappropriate for application to crimes against women including sexual assault because it frames the precipitating incident as a conflict, and crime is not a conflict. It also fails to acknowledge the structural inequalities between the victim and offender in gendered crimes, has no explicit processes to address these imbalances, and does not involve other stakeholders except the primary victim (for a critique, see Brown, 1994; Zellerer, 1996). Civil justice is also available for some sexual offenses and offers the hope of reparation in the form of damages. However, it is pursued only where someone with potentially deep pockets is at fault, which limits its effect as an accountability tool (Hopkins et al., 2004). Furthermore, civil justice is an adversarial process that shares the traumatizing features of retributive justice, lacks some of the protections against questioning the victim about her sexual past, and also sometimes involves comparative fault doctrine, a new way to promote victim blame that is not part of criminal trials. Even in states without written law on comparative fault doctrine, victim blaming may nevertheless be part of law in action (Bublick, 1999).

In contrast, a *fully restorative* program involves all three sets of stakeholders including victims, offenders, and their communities of care such as sentencing circles and family group or community conferencing (McCold & Wachtel, 2002, p. 116). Sentencing circles arose in Canada in 1992 in the Yukon Territory and the Province of Saskatchewan in rural and urban settings as a response of First Nations people to crime (Wilson, Huculak, & McWhinnie, 2002). Sentencing circles involve bringing together a large group of people, including judges, prosecutors, police officers, social workers, the offender, the victim, and community members. Although qualifying as a fully restorative model, sentencing circles have been criticized on several grounds including reliance on court processes and deference to criminal justice personnel by the circles (LaPrairie, 1995). Many experts believe community or family conferencing is the most developmentally advanced form of restorative justice and comes the closest to achieving its ideals (Dignan & Cavadino, 1996). Conferencing brings together victims, offenders, and their supporters for a face-to-face meeting in the presence of a convener where they are encouraged to discuss the effects of the incident on them and to make a plan to repair the damage done and minimize the likelihood of further harm (Moore, as quoted in Stubbs, 1997; also see Umbreit, 2000). Family group conferencing was established as the primary response for youth crime in New Zealand in 1989. In the United States, restorative conferencing grew out

of concerns about the effectiveness of incapacitation, punishment, and individual treatment provided juveniles in diversion programs, probation services, and community corrections units (Bazemore & Umbreit, 2001). Today, the method is in widespread use for resolving juvenile crime in Australia (Daly, 2001; Sherman, Strang, & Woods, 2000), Canada (Bonta, Rooney, & Wallace-Capretta, 1998; Stuart, 2001), Europe (Miers, 2001; Walgrave, 1999; Weitekamp, 1999; Young & Hoyle, 2003), New Zealand (Morris & Maxwell, 2001), and the United States (McCold & Wachtel, 1998; Umbreit, 2001). Examples of conferencing models include family group decision making as implemented by Pennell and Burford (2000) in Canada to address families where children were being abused. The Reintegrative Shaming Experiments (RISE) in Australia (Strang, Barnes, Braithwaite, & Sherman, 1999) applied conferencing to several categories of crimes including juvenile sex offenders (Daly, 1998, 2002; Daly, Curtis-Fawley, & Bouhours, 2003a, 2003b).

Evaluations of the Conferencing Model of Restorative Justice

Initially, many people express concerns that victims would not want a face-to-face encounter with the offender. The 1984 British Crime Survey found that one half of respondents across all crime categories would have accepted a chance to meet their offender personally and discuss restitution, and an additional 20% would have liked to reach agreement without a meeting (Strang, 2002). A Minnesota study showed that three fourths of victims wanted a chance to speak directly to the offender (Umbreit, 1989). Only 6% of victims in New Zealand said they did not want to attend a conference (Maxwell & Morris, 1996), although programmatic features may influence the actual rate of victim participation achieved. Furthermore, despite the growing literature encouraging consideration of restorative justice for crimes against women including sexual assault (see Bazemore & Earle, 2002; Coker, 1999; Daly, 2002; Dignan & Cavadino, 1996; Hudson, 1998; Koss, 2000; Peled, Eiskovitz, Enosh, & Winstok, 2000; Snider, 1998; Strang & Braithwaite, 2002), advocates and scholars have expressed some reservations (for a review see Curtis-Fawley & Daly, 2004; Daly, 2001, 2003; Hopkins et al., 2004; Stubbs, 1997, 2004). Prime areas of concern are that resources for communication may be unequal, making it difficult for the victim to be heard, the potential for reabuse, and fears that the social network that attends the conference will support the responsible person and reinforce traditional patriarchal values (Hopkins et al., 2004). In contrast, Roche (2002) argued that restorative conferencing is a self-corrective process, which is one of the strongest mechanisms of accountability; that is, there may

be some persons at the conference who hold victim-blaming and rape-supportive ideas. However, there will also be participants who will contradict these ideas.

A recent secondary analysis of 41 published evaluations of juvenile justice programs provides a coherent overview of the empirical literature. Studies were classified as *nonrestorative*, *partly*, *mostly*, or *fully restorative justice* (McCold & Wachtel, 2002). In terms of victim satisfaction, 9 of the top 10 programs were fully restorative, and 9 of the bottom 10 were conventional justice. Mean satisfaction was 91% for conferencing (fully restorative), 82% of victim-offender mediation (partly restorative), and 56% for conventional justice. Satisfaction was highly related to perceptions of fairness ($r = .815$). Victims and offenders rated fully restorative programs as more fair. Seven of 9 fully restorative programs had less than 15% difference in satisfaction among the ratings of victims, offenders, and family and community members, reflecting successful achievement of a balanced approach. On average, victims and offenders rated programs that included their community of care as more fair and satisfying than conventional justice and those programs that involved the victim but excluded their community of care. Umbreit, Coates, & Vos (2002) completed a review of 63 studies documenting the processes and outcomes of restorative justice conferencing ranging in methodological soundness from exploratory to experimental. They concluded that, "The vast majority" find the experience "satisfactory, fair, and helpful" (p. 22).

A prime indicator of the success of restorative justice is the victim's perception of his or her extent of involvement, the degree of reparation, and the perception of fairness of process and outcomes (Bazemore & McLeod, 2002). For example, McCold and Wachtel (1998) reported a random assignment experiment and found that 97% of conferenced victims said they experienced fairness compared to 79% of the control group that was assigned to the court, and 73% of the group that declined conferencing and also went to court. McGarrell (2001) reported an evaluation of the Indianapolis Restorative Justice Experiment. Cases were randomly assigned to juvenile court or conferencing. Victim satisfaction was more than 90% after conferences compared to 68% following court. Conferences produced 13.5% less recidivism at 6 months, and youth were significantly more likely to complete their program. At 12 months, rearrest was 30% (conferences) versus 42% (court). Similar figures were reported for feelings that the offender had been adequately held accountable. In the Reintegrative Shaming Experiments (RISE) in Australia (Strang et al., 1999), a group of 845 offenders age 30 years or younger who had committed violent crimes were randomly assigned to court or conference. All of the satisfaction and fairness ratings favored the conference process. For example, victims were much more likely to be kept

informed of their cases in conference (79%) compared to court (14%). Daly, Curtis-Fawley, & Bouhours (2003a, 2003b) focused on 387 sexual offense cases in South Australia although outcome data have not yet been released. In a subset of serious indecent assaults by 23 juveniles that were examined in detail, all offenders attended a sex offender treatment program as part of the plan developed at the conference (except for those who lived in rural areas), and 20 of 23 offenders fully completed their plans (Daly, 2002). Pennell and Burford (2000) reported that among chronic, abusive, multiproblem families that were facing removal of their children and had a conference as a last resort, the rate of child protection events during follow-up was one half of the number for matched cases that received traditional case management.

Another variable that has been evaluated in predicting satisfaction with the outcomes of conferencing is whether the offender articulated remorse or an apology. None of the restorative approaches include in their agenda specific procedures that are intended to elicit apologies, nor would apology be accepted as meaningful accountability in and of itself (for a theory and experimental findings on apology see Tavuchis, 1991, p. 21; Petrucci, 2002). The evidence suggests that most often victims will accept apologies (Bennett & Dewberry, 1994; Bennett & Earwaker, 1994). Victims' primary gain from apology is the opportunity to have their emotional hurt acknowledged and be relieved of their anger and bitterness. In laboratory studies, anger in victims was dissipated when the offender was seen as responsible (Bennett & Earwaker, 1994; also see our discussion of the complexity of apology when using restorative justice in domestic violence—Hopkins et al., 2004).

Apologies frequently occur spontaneously in conferences. In one conferencing evaluation, 96% of victims said that offenders apologized during the conference, and 88% of them perceived that he seemed sorry for what he did (McCold & Wachtel, 1998). Strang (2002) reported that the percentage of victims who received an apology in RISE was 72% for cases receiving restorative justice processing compared to 19% in court. In addition, restorative justice participants were more likely to perceive that the apology was sincere (77%) compared to victims whose cases were tried in court (41%). In restorative justice proceedings where apology did not occur, the level of tension in the room remained high and participants left feeling dissatisfied (Retzinger & Scheff, 1996). Apology is important to perpetrators as well. Interviews conducted within 90 days from completion of victim-offender mediation demonstrated that apology was the most frequent reason chosen by perpetrators for their decision to participate, and afterward, virtually 100% of offenders felt it was important or very important (Fercello & Umbreit, 1998; Umbreit & Greenwood, 1999). In New Zealand, youthful offenders who did not apologize during a family conference were 3 times

more likely to reoffend after 3 years of follow-up than youth who apologized (Morris & Maxwell, 1997).

Based on the preceding documentation of problems in the response of conventional criminal justice to sexual assaults and date-acquaintance rape, affinity for the aspirations of restorative justice, generally, and the conferencing approach, specifically, and our firm belief that victims deserve and need alternate avenues of justice for meritorious cases of sex crimes, our collaboration designed and implemented the RESTORE Program.

THE RESTORE PROGRAM

RESTORE's vision is to offer "Justice that Heals." Its mission is, "To facilitate a victim-centered, community driven resolution of selected individual sex crimes that creates and carries out a plan for accountability, healing, and public safety." The program is funded as a violence prevention program for perpetrators by the Centers for Disease Control and Prevention. Perhaps the most significant aspect of RESTORE's procedures is that they permit attention to the healing of survivors in the context of a program that is funded to reduce reoffending. One repeated criticism of sex offender incarceration as well as other retributive justice system approaches to prevention is their high costs and the resulting disproportion to the funds allocated to survivor care (Becker & Hunter, 1997). RESTORE is designed to balance the needs to survivors, responsible persons, and the community including family and friends, as well as the broader community that the Community Accountability and Reintegration Board (CARB) represents. Candidate crimes for referral to RESTORE are first detected rapes involving acquaintances as well as nonpenetration sexual offenses, providing that perpetrators used only the minimum amount of force necessary to compel an unwanted sex act, did not intentionally administer drugs (voluntary intoxication by alcohol and other drugs of victim and offender is allowed), has no felony arrests in the past 5 years, no prior convictions for interpersonal violence or repeated arrests for domestic violence (RESTORE is not designed for sexual violence in the context of ongoing partner violence). Survivor and responsible person must be older than age 18 years and competent to consent. RESTORE has four stages.

Referral Stage

Referral to RESTORE is solely at the discretion of prosecutors, who are positioned by training and experience to ensure that the cases are meritori-

ous, selected fairly, and have reasonable chance of conviction. Victims are not coerced into participating and may request conventional justice. They are given a list of pro bono attorneys to advise them on their decision if desired. RESTORE is offered to the offender only after the victim has agreed to participate. Offenders are referred precharging, which does not trigger a right to counsel. Therefore, RESTORE has an agreement with the public defender's office to advise indigent offenders who have been offered RESTORE. Victims and offenders sign written informed consent prior to entering the program. Given the numerous constitutional protections afforded defendants under traditional justice, why would a defense attorney advise a client to participate? Defense attorneys are ethically bound to give their clients choice. RESTORE is an avenue to (a) get help for an offender; (b) remove whatever degree of risk of incarceration that may exist; (c) avoid the vulnerability to sex offender registration, which is at judges' discretion even when it is not mandatory under sentencing guidelines; (d) offer no criminal record of conviction for those who successfully complete the program and do not reoffend; (e) render unnecessary the pursuit of civil actions by the victim to obtain reparations; and (f) provide confidentiality and no written record of the conference so that nothing that is disclosed can be used in subsequent legal actions should the restorative process fail. To complete enrollment, the offender must have a psychosexual evaluation (and polygraph examination if the evaluator deems it necessary) so that program can make the most informed decision that risk levels are appropriate for a community-based program. There is a sliding scale fee assessed for the offender to participate, and to enter he or she must acknowledge that the sexual act occurred. The victim is eligible for and provided assistance in applying for victim's compensation immediately on entry into the program and through arrangements with that office, so they have their urgent needs met while participants are prepared for the conference.

Preparatory Stage

Preparation is a key to success in community conferencing. A case manager meets with the survivor to assess safety, identify who will attend the conference with her, help articulate the impacts of the offense, and formulate appropriate reparation expectations. With assistance, the survivor also prepares a written impact statement and designates a trusted person to read it in case it becomes difficult to speak at the conference. It is possible that a survivor desires to elect RESTORE, but does not want to participate in a face-to-face meeting. With the survivor's permission, a family member or friend

can be designated to participate instead, read the impact statement, and contribute the survivor's thoughts to the discussion of reparations. However, a conference would never be conducted against the consent of the survivor, regardless of the desire of family members and friends to go forward. Family members have a separate preparation meeting to consent, learn the ground rules, and sign the confidentiality agreement. The case manager also meets individually with the responsible person. The responsible person is helped to prepare a statement describing his or her acts, taught the ground rules for program participation, and briefed on what type of items he or she can expect in the redress plan. The case manager also meets with family and friends of the responsible person to ensure that they are informed of the reason that the conference is being held and are prepared to participate. The preparation stage may extend for multiple weeks if necessary to ensure the survivor is sufficiently stabilized and the responsible person is prepared to participate constructively.

The case manager works with the responsible person and the survivor to select appropriate family and friends. Responsible persons are required to invite a parent or guardian to maximize the extent those who are most closely connected attend the conference and learn the details of the offense and participate in planning its redress. The case manager can also encourage supplementation of the survivor's group with additional participants to represent the healthy, provictim segments of the community. The number of participants is limited to 5 each for survivor and responsible person to ensure that everyone has sufficient opportunity to speak and the conference is a manageable length.

Conferencing Stage

The conference is held in a secure location. Except for the conference, there is no unapproved contact allowed with the survivor. If the responsible person breaks this or any other program rule, it is grounds for termination from the program and return of the case to the prosecutor. A convener, assisted by a case manager, organizes the conference. The convener's role is to ensure that each person has the opportunity to speak directly and to be respectfully heard, that the rules are observed, and that the discussion covers all the components of a conference (description of the act, identification of the harm, formulating a repair plan). Program rules are designed to prevent reabuse of the survivor in the conference. If a responsible person or any other participant becomes abusive, the conference is terminated at the discretion of the convener, and the case returned to prosecution. No attorneys are involved

in the conference in an official capacity, and there is no written record of the conference. Only the redress plan is written and is signed by survivor and responsible person at the close of the conference. On signing the redress plan, the survivor's participation may end, if she or he chooses, although he or she and other conference attendees are notified and permitted to attend any future meeting where the responsible person is on the agenda. Survivors will be notified quarterly of the responsible person's status (in compliance or out of compliance). They will be notified immediately in the case of reoffense or termination.

The redress plan specifies what will be done, the dates by which it will be completed, and how fulfillment will be documented. Legal doctrine teaches that accountability must be proportional to the harm caused, not too lenient nor too harsh. To avoid plans that are perceived by the community as too lenient, all redress plans contain the stipulation that the responsible person undergoes treatment recommended by RESTORE program staff based on the required psychosexual evaluation. In addition, responsible persons are under supervision for 12 months to compel completion of the redress plan, or if not completed, to return the case to prosecutors.

To avoid plans that are too harsh, case managers work with survivors to identify their desires and needs for reparation, and when necessary, to outline the boundaries of what is possible. Items that survivors or family members could suggest include payment of the survivor's direct expenses for lost time from work, medical and counseling expenses, service to surrogate victims, stay-away or relocation agreements, community service, apology, reputation repair, submission to testing for sexual diseases and HIV, culturally specific responses to restore harmony, and answers to survivor's questions such as "Why did you choose to do this?" or "Was there something about me?" These items are only examples because each redress plan is individually survivor driven. Off-limits are incarceration, castration, extremely large sums of money, or humiliating punishments such as wearing an armband that says *rapist*.

The conferencing model offers an approach to cultural competence that is unique in the justice system (see Daly, in press). The conference brings together community members and family of the survivor and responsible person. Because most crime occurs within ethnic groups, conference participants are most often members of the same ethnic-cultural community. For example, 72.4% of the rapes of White women are by White men, and 83.5% of the rapes of African American women are by African American men (U.S. Department of Justice, 2002; figures on other ethnicities were not provided). The result is that their shared language, religion, economic status, race or eth-

nicity, and/or sexual orientation becomes the dominant culture of the conference. The conference allows responsible persons to air issues of adverse childhood, previous abuse, substance abuse, oppression, and economic disadvantage, without framing these issues as exculpatory as often happens in trials. It invites the community to express their solidarity with the responsible person while also repudiating sexual assault. Through its nonincarceration focus and its use of a format where the participants and their shared cultural values shape the resolution, the conference format may help mitigate the racism and unequal access to justice that is perceived to permeate the U.S. criminal justice system. Because Pima County is one third persons of Hispanic origin and also has a significant American Indian population, it is important that the conference can be conducted in Spanish if desired, and that culturally specific methods of healing are included in the redress plan when desired (e.g., Native American ceremonies, activities or counseling within the faith community, or traditional sanctions such as temporary banning).

Accountability and Reintegration Stage

Case managers supervise responsible persons for 12 months following the conference. They have weekly telephone and monthly face-to-face contact, receive the documentation from responsible persons as stipulated in their redress plans, document any problems in complying with the terms of the redress plan or program rule infractions, and keep survivors informed. Case managers report their summaries of responsible persons' progress to the CARB. The CARB performs three functions including (a) representing the broader community in validating the violation of the survivor and condemning sexual assault; (b) serving as resources for responsible parties to help solve problems that are preventing timely progress on the redress plan; and (c) functioning as the decision-making group that terminates responsible persons who fail to adhere to their agreement or program rules. The conference and the interactions with the CARB are designed to maintain the responsible person's bonds to the community by preserving relationships, involving an extended community of care, and providing them with the means to make amends and reach an endpoint where they have earned the privilege of moving beyond the offense. Responsible persons meet with the Board following the conference, at 6 months and at program exit, or more frequently in the case of noncompliance. Responsible persons who successfully complete their agreements appear personally before the Board for a formal case closure, and all those who attended the conference are invited to attend if desired.

RESTORE operates during a period of time, involves several processes, and addresses different problems depending on whether one takes the survivor, responsible person, or community vantage point. During the course of 12 months, these stakeholders participate in social interactions that variously initiate or augment social support and validation, provide a means for making amends, extend counseling or psychotherapy, and involve the social network (family, friends, and a board representing the broader community) in reinforcing community norms and maintaining social bonds. Ultimately, RESTORE is concerned with affecting the problem of reoffending by responsible persons, the need for moral justice among survivors, and the problem of community disengagement in resolving crime. How could RESTORE affect reoffending? Positive outcomes for responsible persons are achieved through (a) raising the costs of future offending by an affirmative response to the first detected offense, (b) catalyzing success in sex offender treatment and other psychosocial treatments by preventing drop-out and facilitating intervention earlier in the offending career, and (c) fostering reintegration into the law-abiding community by presenting concrete means to express remorse and make amends and by offering community resources and encouragement. Likewise, how would RESTORE affect survivors' moral satisfaction with the justice response? As we conceptualize it, the likelihood of moral satisfaction is increased when survivors experience a justice process that is less provocative of emotional distress and more affirmatively attuned to survivor needs. Positive outcomes for survivors are achieved through (a) nonadversarial format that minimizes the extent to which they feel blamed for their assault; (b) choice that creates empowerment; (c) social validation, reparations, and expressions of remorse by the responsible person that help release and reduce negative emotions; and (d) direct communication that reduces fear. Bazemore and O'Brien (2002) noted that it is not possible to specify a single theory that can account for all of these outcomes and that several, well-developed theories across the social sciences provide a foundation from which to conceptualize hypothesized effects of restorative conferencing and the other components of a program such as RESTORE.

Future Directions

RESTORE operates under a grant for program implementation and evaluation through 2006. Four types of evaluation are ongoing. First, process evaluation for program monitoring determines that the intervention was delivered as designed and in a standardized manner. Second, impact evaluation focuses on the achievement of the intermediate outcomes that are conceptualized as leading to the problem of low moral satisfaction with justice for sur-

vivors, or the problem of reoffending for responsible persons. Third, the merit and worth of the program is assessed by demonstrating that there has been a reduction in the targeted problems. Finally, program inputs and outputs in terms of resources required and amounts of services delivered are monitored to assess oversight and compliance with the contract.

Development of logic models contributes both to the planning and evaluation of a program (Renger & Titcomb, 2002; also see Umbreit et al., 2002). The logic model formalizes the rationale for a program and how its impact will be assessed. Development of a logic model involves three steps. Step 1 consists of identifying the problem that a program is designed to address, the antecedent conditions that lead to the problem, and the empirical support for the hypothesized influences of conditions on problems. Step 2 involves specifying those conditions that are influenced by the program's components. Step 3 operationalizes the measurement that will be used to determine whether the program has affected the antecedent conditions as expected, and the extent to which the targeted problems have been impacted. In the case of RESTORE, three logic models were developed to formalize the rationale of the program as an intervention that aims to address (a) the problem of moral justice for survivors, (b) the problem of reoffending for responsible persons, and (c) the problem of community disengagement from survivor recovery and responsible person rehabilitation.

We are using a multimethod battery of assessments that include preconference and postconference survey for all participants and additional self-report assessments across time for survivors and responsible persons. In addition, observational ratings of each conference are made to provide an independent rater's vantage point on the behaviors and emotions that occur during the face-to-face meeting. We are conducting observations of the program in operation and using checklists to assess the fidelity of program delivery against the program design. Finally, we are coding archival data from police and prosecution records to assess how an alternative justice program impacts on case processing. For example, it is important to track whether there are demonstrated differences in the characteristics of sexual assault cases where charges were laid comparing an index year prior to program initiation to a year when the program is operating up to capacity. The comparison can answer significant questions such as whether a larger proportion of meritorious cases than before are held accountable with an alternate justice process in place. Another key question these data address is whether the restorative conferencing option is being fairly distributed among the diverse victims and perpetrators of sex offenses.

CONCLUSIONS

The crimes that RESTORE addresses are not minor, yet they typically elicit minimal accountability from those who cause harm. The aim of this article is to present an empirical rationale for alternative avenues of criminal justice response to sexual assault and rape. The data depicted conventional justice as consisting of a multipronged system that has the effect of drastically narrowing the pool of victims for whom promises of justice are fulfilled. In addition, even where sanctions are applied, they are too few, too inconsistent, and too distant from the initiating incidents to prove potent as preventive measures. Furthermore, the justice process itself exacerbates victim distress rather than promotes healing. We described the RESTORE Program that we are evaluating. The program is designed to offer a more immediate, empowering, satisfying, fair, humane, comprehensive, and inclusive response. In designing it, we pay close attention to the extensive set of concerns that have been expressed about using restorative justice for crimes against women including sex crimes.

RESTORE has been on the drawing board since 1999, and our collaboration was formed in 2000. Nothing that has been written on research-practitioner collaboration can do justice to the challenges of getting community partners as diverse as law enforcement, prosecution, probation, victim services, and evaluators to sit at a table and design a common product during several years, achieve federal funding for it, and operate an integrated program through which participants flow seamlessly (for discussions of research-community collaborations see Betts et al., 1999; Cross, 1999; Daly & Kitcher, 1998; Edleson & Bible, 1998; Israel, 2000; Littel, Malefyt, & Walker, 1998; Roussel, Fan, & Fulmer, 2002). To collaborate effectively, we are continually working through differences stemming from disciplinary perspectives and terminology, diverse value systems, varying institutional approaches to managing work, alternate accounting processes and budget cycles, unequal understandings of what constitutes a program that can be evaluated, priorities such as trials and survivor emergencies that affect availability, staff turnover, and communication styles that arise from discipline, gender, and culture.

Nor could this article capture the complex issues we face in designing a program that is accepted as a justice process. In addition to the challenge of recruiting and training a culturally diverse staff with expertise working with survivors and responsible persons, creating and revising procedures that function smoothly and can be administered consistently, and integrating evaluation activities into a developing program, significant legal issues were

posed in creating a community-based alternate justice program. Some of these issues include informed consent and the protocol for obtaining it, the ability of both parties to consult and reconsult or waive counsel, confidentiality and how disclosures in the conference and the psychosexual evaluation are protected from introduction in potential subsequent legal proceedings on the matter, how proportionality of sanctions to the harm done is monitored, testing facilitators' skills in assuring legal rights, and implementing human subjects protection procedures. We are preparing a paper addressing these concerns led by the law professor member of our team (Hopkins).

Community collaboration takes on a new meaning when you are jointly planning a program in which each entity will have a role as opposed to just coordinating the services individually delivered to survivors. The decision to base the program in a victim services agency was made consciously to ensure that the restorative justice services we delivered would be survivor driven. Services are delivered through a community agency rather than through the University of Arizona following the commitment of public health to building capacity in the world outside the ivory tower (Cross, 1999). Research has shown that programs with strong community ties are the most likely to be sustained (Roussel et al., 2002). These decisions were strategic because advocates see positive features and have concerns and reservations. Even the direct involvement of a rape services agency has not, however, totally isolated RESTORE from criticism from within and without. The process of bringing along stakeholders to share the vision has not ended.

These comments suggest an incredible amount of work, stress, and difficult human resource issues; however, in reality it is fairly heady to observe the community energy that can be brought to bear on a social issue when there is a shared vision in place. At the same time, we observe that much of the debate about justice response to crimes against women including sexual assault is taking place in the theoretical realm and really cannot move much further without empirical experience. We believe that proceeding cautiously to implement and evaluate a research-demonstration project such as RESTORE can provide data to enhance applied practice and theoretical discussion.

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